

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON,

Plaintiff,

v.

LANDMARK TECHNOLOGY A, LLC,
and RAYMOND MERCADO,
individually,

Defendants.

NO. 2:21-cv-00728-RSM

SUPPLEMENTAL DECLARATION
OF BEN BRYSAZ REGARDING
STATE'S MOTION TO COMPEL
AND RELIEF FROM DEADLINES TO
ADDRESS POTENTIAL DISCOVERY
MISCONDUCT

NOTE ON MOTION CALENDAR:

Wednesday, July 24, 2024

I, Ben Brysacz, declare as follows:

1. I am an Assistant Attorney General in the Consumer Protection Division of the Washington State Attorney General's Office. I am one of the attorneys of record for the Plaintiff State of Washington in the above-captioned matter. I am licensed to practice law in the State of Washington and am an active member in good standing of the WSBA.

2. I make this declaration with personal knowledge.

3. While scheduling Plaintiff's deposition of Melody Camp—who I understand to be Defendant Mercado's mother—Defendants represented that Ms. Camp does not have a device of her own for attending a video deposition, and Defendant Mercado only has one laptop. A copy of email correspondence between me and Defendants' counsel dated June 11, 2024, is attached as **Exhibit K**.

SUPPLEMENTAL DECLARATION OF
BEN BRYSAZ REGARDING STATE'S
MOTION TO COMPEL AND RELIEF
FROM DEADLINES
(2:21-cv-00728-RSM) - 1

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1 4. Prior to Defendants’ opposition brief filed on July 18, 2024, including during the
2 parties’ July 2, 2024 Rule 26 conference regarding those documents, Defendants never described
3 the documents produced on June 25, 2024, as impeachment materials.

4 5. Documents produced by Defendant LTA in response to the State’s 2020 CID and
5 by Defendants in response to litigation discovery included more than 1,000 documents related
6 to non-Washington companies accused of infringement by Defendants and many related to
7 Landmark Technology LLC (LT). For example, with respect to documents related to LT,
8 Defendants previously objected that “Landmark does not generally have possession, custody, or
9 control of the documents of Landmark Technology, LLC. However, pursuant to the assignment,
10 Landmark is in possession of the following responsive documents. *See* LTA 001629-34.”
11 Dkt. 90, Ex. H at 15. Defendant LTA later supplemented its response to say that “the documents
12 of Landmark Technology are not within the custody or control of Landmark Technology A.” *Id.*

13 6. On July 8, 2024, Plaintiff responded in writing to Defendants’ letter regarding the
14 parties’ July 2, 2024, telephone conference. A copy of the July 8 letter is attached as **Exhibit L**.
15 To date, Defendants have not responded to the letter or to any of the specific questions posed in
16 that letter such as (1) has Melody Camp ever owned a computer and if so, was that computer
17 ever used to conduct business related to LT or LTA, (2) what are the two email addresses
18 associated with LTA that Defendants searched, (3) did Defendants search Defendant Mercado’s
19 personal email accounts, if they were ever used to communicate about LT/LTA or the ‘319 or
20 ‘508 Patents, (4) did Defendants search Melody Camp’s email account, and (5) what search
21 terms or other parameters—including date ranges—were used to conduct Defendants’ most
22 recent search?

23 7. A copy of a document produced by Defendants on July 11, 2024, and marked
24 LTA_037591 is attached as **Exhibit M**.

25 8. A copy of a document produced by Defendants on July 11, 2024, and marked
26 LTA_037509 is attached as **Exhibit N**.

1 9. I consider Exhibits M and N—and Defendants’ other newly-produced
2 documents—responsive to the following: (1) Plaintiff’s 2020 CID, ROG 4 and RFPs 3, 6, and
3 8; and (2) Plaintiff’s RFPs 4, 6, 8, 14 and 17. *See* Dkt. 90, ¶¶ 13, 18.

4 10. Defendants have not identified which email addresses were searched, let alone
5 how or when they were searched.

6 11. A copy of a document produced by Defendants on July 11, 2024, and marked as
7 LTA_037514 is attached as **Exhibit O**. This document contains an email chain between
8 Defendant Mercado and his mother Melody Camp discussing several target companies—
9 including some in Washington—and describing some as companies that “settled early” and
10 should therefore be pursued, or should be removed as a target because they utilized a “Yahoo
11 e-commerce store.”

12 12. A copy of a document produced by Defendants on July 11, 2024, and marked as
13 LTA_037685 is attached as **Exhibit P**. This document contains an email chain between
14 Defendant Mercado and his mother Melody Camp discussing several target companies,
15 including some described as “DJ risk” and others as having “fast-settled patent cases.” It also
16 describes removing target companies with certain names: “Don’t want any family-owned mom-
17 and-pop implications, even in the name of the company and even if it’s not really true.”

18 13. A copy of a document produced by Defendants on July 11, 2024, and marked as
19 LTA_037787 is attached as **Exhibit Q**. This document contains an email chain between
20 Defendant Mercado and his mother Melody Camp discussing several target companies,
21 including some described as “litigious” and others as “fast settlers.”

22 14. A copy of a document produced by Defendants on July 11, 2024, and marked as
23 LTA_038189 is attached as **Exhibit R**. This document contains an email chain dated August 28,
24 2017 between Defendant Mercado, Lawrence Lockwood, John Lee, Melody Camp, and Patrick
25 Nunally in which Lockwood says “Melodi” suggests “we increase our weekly mailing from ten
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1 to fifteen letters” as well as having some letters reference the ‘319 patent and others reference
2 the ‘508 patent “[s]o we begin to introduce it.”

3 15. A copy of a document produced by Defendants on July 11, 2024, and marked
4 LTA_037648 is attached as **Exhibit S**.

5 I declare, under penalty of perjury under the laws of the State of Washington, that the
6 foregoing is true and correct.

7 DATED this 24th day of July, 2024, at Seattle, Washington.

8
9 /s Ben Brysacz

10 BEN BRYSA CZ, WSBA No. 54683
11 Assistant Attorney General
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CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing to be served on all counsel of record via the ECF system.

I certify, under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct.

DATED this 24th day of July, 2024, at Seattle, Washington.

/s Ben Brysacz

BEN BRYSACZ, WSBA No. 54683
Assistant Attorney General